

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION**

LAURA YARNELL, Trustee under	)	
the Trust of S. Cameron Yarnell for	)	CASE NO. 1:09-CV-49
the children of S. Cameron Yarnell,	)	
	)	Judges Edgar and Carter
v.	)	
	)	
TRANSAMERICA LIFE INSURANCE	)	
COMPANY, et al.	)	

**MOTION OF TRANSAMERICA LIFE INSURANCE COMPANY  
TO DISMISS THE NEGLIGENCE CLAIM  
IN PLAINTIFF’S SECOND AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Transamerica Life Insurance Company (“Transamerica”) moves to dismiss the negligence claim against it contained in Plaintiff’s Second Amended Complaint. In support of this Motion, Transamerica would show the Court:

Transamerica owed no common law duties to Mrs. Yarnell. Further, Plaintiff has not pled and cannot plead sufficient facts to show that Defendant SunTrust Securities, Inc. (“SunTrust”) acted within the scope of any actual or apparent authority as Transamerica’s agent regarding notice that insurance policy premiums were due. Thus, as a matter of law, Transamerica cannot be held liable for SunTrust’s allegedly negligent acts.

Transamerica further relies on the arguments contained in, and incorporates by reference, its Motion to Dismiss the Negligence Claim in Plaintiff’s Amended Complaint and supporting Brief (Doc. Nos. 23, 24) and its Reply to Plaintiff’s Response to Transamerica’s Motion to Dismiss the Negligence Claim in Plaintiff’s Amended Complaint (Doc. No. 38).

WHEREFORE, Defendant Transamerica Life Insurance Company respectfully moves the Court for an Order dismissing with prejudice the negligence claim against Transamerica in Plaintiff's Second Amended Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

CHAMBLISS, BAHNER & STOPHEL, P.C.

By: s/ D. Aaron Love

Bruce C. Bailey, BPR No. 011217

D. Aaron Love, BPR No. 026444

1000 Tallan Building

Two Union Square

Chattanooga, TN 37402

Telephone: 423-756-3000

Facsimile: 423-265-9574

*Counsel for Transamerica Life Insurance  
Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2009, the foregoing MOTION was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/ D. Aaron Love  
D. Aaron Love